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EXTRAORDINARY

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PART II—Section 2
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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on 24th August, 1976:—

BILL No. 74 OF 1976

A Bill to provide for the taking over of the management of the undertaking of the Metal Corporation, after such undertaking is deemed to have been transferred to, and re-vested in, the said Corporation, and for the subsequent acquisition of the undertaking of the Metal Corporation for the purpose of enabling the Central Government, in the public interest, to exploit to the fullest extent possible, the zinc and lead deposits in and around Zawar area in the State of Rajasthan and to utilise those minerals in such manner as to subserve the common good, and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Twenty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Metal Corporation (Nationalisation and Miscellaneous Provisions) Act, 1976.

(2) Sections 20 and 21 shall come into force at once and the other provisions of this Act shall be deemed to have come into force on the 22nd day of October, 1965.

Short
title
and com-
mence-
ment.

Defini-
tions.

2. In this Act, unless the context otherwise requires,—

(a) "appointed day" means the 2nd day of August, 1976;

(b) "commencement of this Act" means the 22nd day of October, 1965;

(c) "Metal Corporation" means the Metal Corporation of India Limited, a company within the meaning of the Companies Act, 1956, and having its registered office at Calcutta;

1 of 1956.

(d) "Mineral Concession Rules" means the Mineral Concession Rules, for the time being in force, made by the Central Government under the Mines and Minerals (Regulation and Development) Act, 1957;

67 of 1957.

(e) "notification" means a notification published in the Official Gazette;

(f) "prescribed" means prescribed by rules made under this Act;

(g) words and expressions used in this Act and not defined but defined in the Companies Act, 1956, have the meanings respectively assigned to them in that Act.

1 of 1956.

"Under-
taking"
—mean-
ing of.

3. For the purposes of this Act, the undertaking of the Metal Corporation shall be deemed to include all assets, rights, leaseholds (including mining leases, if any), powers, authorities and privileges and all property, movable and immovable, including lands, buildings, works, mines, workshops, projects, smelters, refineries, stores, instruments, machinery, locomotives, automobiles and other vehicles, mined or extracted zinc or lead ores, concentrates and metals, in process or in stock or in transit, cash balances, cash in hand, reserve fund, investments and book debts and all other rights and interests in, or arising out of, such property as were immediately before the date of commencement of this Act in the ownership, possession, power or control of the Metal Corporation, whether within or without India, and all books of account, registers, maps, sections, drawings, records of survey and all other documents of whatever nature relating thereto; and shall also be deemed to include all borrowings, liabilities and obligations of whatever kind of the Metal Corporation in relation to its undertaking.

CHAPTER II

TAKING OVER OF MANAGEMENT OF THE UNDERTAKING OF THE METAL CORPORATION

Taking
over of
manage-
ment of
the under-
taking of
the
Metal
Corpora-
tion.

4. (1) On the commencement of this Act, the Metal Corporation of India (Acquisition of Undertaking) Act, 1966, shall stand repealed, and on such repeal, the undertaking of the Metal Corporation, which had been transferred to, and vested in, the Central Government by virtue of the provisions of section 3 of the Act so repealed, and the undertaking of the Metal Corporation together with all its properties, assets, liabilities and obligations specified in sub-section (1) of section 4 of that Act and such other properties, assets, liabilities and obligations, acquired or incurred, for the purposes of its undertaking, after the 22nd day of October, 1965, which stood, by virtue of the provisions of section 12 of the said Act, transferred to, and vested in, the Government company formed in pursuance of the provisions of section 12 of the Act aforesaid, shall, by virtue of the provisions of this Act, be deemed to have been re-transferred to and re-vested in, the Metal Corporation, and,

36 of 1966.

immediately thereafter, the management of the undertaking of the Metal Corporation shall be deemed to have been transferred to, and vested in, the Central Government.

(2) Any contract, whether express or implied, or other arrangement, in so far as it relates to the management of the business and affairs of the undertaking of the Metal Corporation, and in force immediately before the commencement of this Act, shall be deemed to have terminated on such commencement.

(3) All persons in charge of the management, including persons holding offices as directors, managers or in any other managerial capacity specified in section 197A of the Companies Act, 1956, of the Metal Corporation immediately before the commencement of this Act, shall be deemed to have vacated their offices as such on such commencement.

1 of 1956.

(4) Notwithstanding anything contained in any other law for the time being in force, no person in respect of whom any contract of management or other arrangement is terminated by reason of the provisions of sub-section (2) or who ceases to hold office by reason of the provisions contained in sub-section (3), shall be entitled to claim any compensation for the premature termination of the contract of management or other arrangement or for the loss of office, as the case may be.

5. (1) The Central Government may, as soon as it is convenient administratively so to do, appoint, with effect from such earlier or later date (not being a date earlier than the commencement of this Act), any person or body of persons (including a Government company, whether in existence at the commencement of this Act or incorporated thereafter) as the Administrator of the undertaking of the Metal Corporation and the Administrator so appointed shall carry on the management of such undertaking for and on behalf of the Central Government.

Appoint-
ment of
Adminis-
trator to
take
over the
manage-
ment
of the
under-
taking.

(2) On the appointment of the Administrator under sub-section (1), the management of the undertaking of the Metal Corporation shall vest in such Administrator and all persons in charge of the management of such undertaking immediately before such appointment shall cease to be in charge of such management and shall be bound to deliver to the Administrator all assets, books of account, registers and other documents in their custody relating to the undertaking of the Metal Corporation.

(3) The Central Government may issue such directions (including instructions as to initiating, defending or continuing any legal proceedings before any court, tribunal or other authority) to the Administrator as to his powers and duties as the Central Government may deem desirable and the Administrator may also apply to the Central Government at any time for instructions as to the manner in which the management of the undertaking of the Metal Corporation, or in relation to any other matter arising in the course of such management, shall be conducted.

(4) Where any property, the management of which has vested in the Central Government under section 4, is in the possession, custody or

control of any person, such person shall deliver the property to the Central Government forthwith.

(5) Any person who, at the commencement of this Act, has in his possession or under his control any books, papers or other documents relating to the undertaking of the Metal Corporation shall be liable to account for such books, papers and other documents to the Administrator and shall deliver them up to the Administrator or to such person as may be authorised by the Central Government or the Administrator in this behalf.

(6) The Metal Corporation shall, within such period as the Central Government may allow in this behalf, furnish to that Government a complete inventory of all the properties and assets (including particulars of book debts and investments and belongings) of the Metal Corporation at the commencement of this Act, all liabilities and obligations of the Metal Corporation subsisting at such commencement and also of all agreements entered into by the Metal Corporation and in force on such commencement, including agreements, whether express or implied, relating to leave, pension, gratuity and other terms of service of any officer or other employee of the Metal Corporation under which, by virtue of the provisions of this Act, the Central Government has, or will have, or may have, liabilities, and for this purpose, the Central Government shall afford the Metal Corporation all reasonable facilities.

(7) The Administrator shall hold office during the pleasure of the Central Government and shall receive, from the funds of the undertaking of the Metal Corporation such remuneration as may be fixed by the Central Government.

Applica-
tion of
Act.

6. (1) Notwithstanding anything contained in the Companies Act, 1956, or in the memorandum or articles of association of the Metal Corporation, so long as the management of the undertaking of the Metal Corporation remains vested in the Central Government,—

1 of 1956.

(a) it shall not be lawful for the shareholders of the Metal Corporation or any other person to nominate or appoint any person to be a director of the Metal Corporation;

(b) no resolution passed at any meeting of the shareholders of the Metal Corporation on or after the commencement of this Act shall be given effect to unless approved by the Central Government;

(c) no proceeding for the winding up of the Metal Corporation or for the appointment of liquidator or receiver in respect of the undertaking thereof shall lie in any court except with the consent of the Central Government.

(2) Subject to the provisions contained in sub-section (1), and to the other provisions contained in this Act and subject to such other exceptions, restrictions and limitations, if any, as the Central Government may, by notification, specify in this behalf, the Companies Act, 1956, shall continue to apply to the Metal Corporation in the same manner as it applied thereto before the date of commencement of this Act.

1 of 1956.

CHAPTER III

ACQUISITION OF THE UNDERTAKING OF THE METAL CORPORATION

7. (1) On the appointed day, the undertaking of the Metal Corporation, and the right, title and interest of the Metal Corporation in relation to its undertaking, shall stand transferred to, and shall vest absolutely in, the Central Government.

Vesting of the undertaking of the Metal Corporation in the Central Government.

(2) Subject to the other provisions contained in this Act, all property included in the undertaking of the Metal Corporation which has vested in the Central Government under sub-section (1) shall, by force of such vesting, be freed and discharged from any trusts, obligations, mortgages, charges, liens and other incumbrances affecting it, and any attachment, injunction or any decree or order of a court, tribunal or other authority restricting the use of such property in any manner shall be deemed to have been withdrawn.

Explanation.—For the removal of doubts, it is hereby declared that the mortgagee of any property included in the undertaking of the Metal Corporation, or any other person holding any charge, lien or other interest in, or in relation to, any such property, shall be entitled to claim, in accordance with his rights and interests, payment of the mortgage money or other dues, in whole or in part, from the Central Government but no such mortgage, charge, lien or other interest shall be enforceable against any property which has vested in the Central Government.

(3) Subject to the other provisions contained in this Act, all contracts and working arrangements which are subsisting immediately before the appointed day and affecting the Metal Corporation shall, in so far as they relate to the undertaking of the Metal Corporation, cease to have effect or be enforceable against the Metal Corporation or any person who was surety or had guaranteed the performance thereof and shall be of as full force and effect against or in favour of the Central Government and enforceable as fully and effectually as if, instead of the Metal Corporation, the Central Government had been named therein or had been a party thereto.

(4) Subject to the other provisions contained in this Act, any proceeding or cause of action pending or existing immediately before the appointed day by or against the Metal Corporation or the Central Government or the Government company referred to in section 12 of the Metal Corporation of India (Acquisition of Undertaking) Act, 1966, in relation to the undertaking of the Metal Corporation may, as from that day, be continued and enforced by or against the Central Government or the Government company referred to in section 9, as it might have been enforced by or against the Metal Corporation, the Central Government or the Government company, as the case may be, if this Act had not been promulgated, and shall cease to be enforceable by or against the Metal Corporation, its surety or guarantor.

8. (1) Where the right of the Metal Corporation under any mining lease granted, or deemed to have been granted to it by any State Government or any other person, vest in the Central Government under section 7, the Central Government shall, on and from the date of such vesting, be deemed to have become the lessee of such State Government or such other person, as the case may be, in relation to such mine, as if a mining lease in respect of such mine had been granted to the Central Government, and the period of such lease shall be the entire period for

Central Government to be the lessee of the State Government.

which such lease could have been granted by the State Government or such other person under the Mineral Concession Rules, and, thereupon all the rights under such mining lease, including surface, underground and other rights granted to the lessee shall be deemed to have been transferred to, and vested in, the Central Government.

(2) On the expiry of the term of any lease referred to in sub-section (1), such lease shall, if so desired by the Central Government, be renewed by the State Government or other person on the same terms and conditions on which such lease was held immediately before the appointed day by the Metal Corporation, for the maximum period for which such lease could be renewed under the Mineral Concession Rules.

Power of
Central
Govern-
ment to
direct
vesting
of the
under-
taking of
the Metal
Corpora-
tion in a
Govern-
ment
company.

9. (1) Notwithstanding anything contained in section 7, the Central Government may, if it is satisfied that a Government company is willing to comply, or has complied, with such terms and conditions as that Government may think fit to impose, direct, by an order in writing, that the undertaking of the Metal Corporation and the right, title and interest of the Metal Corporation in relation to such undertaking shall, instead of continuing to vest in the Central Government, vest in the Government company either on the date of publication of the direction or on such earlier or later date (not being a date earlier than the appointed day) as may be specified in the direction.

(2) Where the right, title and interest of the Metal Corporation in relation to its undertaking vest in a Government company under sub-section (1), the Government company shall, on and from the date of such vesting, be deemed to have become the lessee in relation to the mines of which the Metal Corporation was the lessee as if a mining lease in respect of such mines had been granted to the Government company, and the period of such lease shall be the entire period for which such lease could have been granted under the Mineral Concession Rules; and all the rights and liabilities of the Central Government in relation to such mines shall, on and from the date of such vesting, be deemed to have become the rights and liabilities, respectively, of the Government company.

(3) The provisions of sub-section (2) of section 8 shall apply to a lease which vests in a Government company as they apply to a lease which has vested in the Central Government and any reference therein to the Central Government shall be construed as a reference to the Government company.

(4) Any reference hereafter in this Act to the Government company shall be construed as a reference to the Government company which is appointed as the Administrator under sub-section (1) of section 5, or, as the case may be, the Government company referred to in the direction made under sub-section (1).

CHAPTER IV

PAYMENT OF AMOUNTS

Payment
of amount
for depri-
vation of
manage-
ment.

10. For the deprivation of the Metal Corporation of the management of its undertaking, there shall be given, in cash, to the Metal Corporation by the Central Government, an amount, calculated at the rate of rupees eleven lakhs and thirty-nine thousand per annum, for the period commencing on the 22nd day of October, 1965, and ending on the appointed day.

11. For the transfer to, and vesting in, the Central Government, under section 7, of the right, title and interest of the Metal Corporation in relation to its undertaking, there shall be given, in cash, by the Central Government to the Metal Corporation, an amount of rupees one crore and ninety-eight lakhs.

Payment of amount for acquisition undertaking.

12. (1) The amount determined under section 10, and the amount payable under section 11, shall be given by the Central Government to the Metal Corporation before the expiry of a period of three months from the appointed day (hereafter referred to as the specified period).

Time of payment.

(2) The amount referred to in sub-section (1) shall, if not paid before the expiry of the specified period, carry simple interest at the rate of four per cent per annum, for the period commencing on the date of expiry of the specified period and ending on the date on which payment of such amount is made by the Central Government to the Metal Corporation:

Provided that no interest shall run from the date on which the amount is tendered to the Metal Corporation if the amount so tendered is not accepted by it.

CHAPTER V

MANAGEMENT, ETC., OF THE UNDERTAKING OF THE METAL CORPORATION

13. The general superintendence, direction, control and management of the affairs and business of the undertaking of the Metal Corporation, the right, title and interest in relation to which have vested in the Central Government under section 7, shall vest in the Government company specified in the direction made under sub-section (1) of section 9, and, thereupon the Government company shall be entitled to exercise all such powers and do all such things as the Metal Corporation is authorised to exercise and do in relation to its undertaking.

Management, etc., of the undertaking.

CHAPTER VI

PROVISIONS RELATING TO EMPLOYEES OF THE METAL CORPORATION

14. (1) Every officer or other employee of the Metal Corporation (except a director or any managerial personnel specified in section 197A of the Companies Act, 1956, or any other person entitled to manage the whole or a substantial part of the business of the Metal Corporation under a special agreement) in the employment of the Metal Corporation immediately before the commencement of this Act shall, in so far as such employee is employed in connection with the affairs of the undertaking of the Metal Corporation, become, as from such commencement, an officer or other employee, as the case may be, of the Central Government or the Government company and shall hold office by the same tenure and at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, gratuity and other matters as he would have held under the Metal Corporation if this Act had not been enacted and shall continue to do so until his employment under the Central Government or the Government company is duly terminated or until his remuneration, terms and conditions are duly altered by the Central Government or the Government company:

Provisions relating to employees.

Provided that if the alteration so made is not acceptable to any such officer or other employee, his employment shall be terminated by the

Central Government or the Government company on payment of an amount equivalent to—

(a) three months' remuneration, in the case of permanent employees, and

(b) one month's remuneration, in the case of other employees:

Provided further that nothing in this section shall apply to any officer or other employee who has, within thirty days next following the commencement of this Act, by notice in writing to the Central Government or the Government company, as the case may be, intimated his intention of not becoming an officer or other employee of the Central Government or the Government company.

(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer of the services of any officer or other employee of the Metal Corporation to the Central Government or the Government company shall not entitle such officer or other employee to any compensation under that Act or other law, and no such claim shall be entertained by any court, tribunal or other authorities.

14 of 1947

Provident
and
other
funds.

15. (1) Where the Metal Corporation has established a provident, superannuation, welfare or other fund for the benefit of the persons employed in its undertaking, the monies relatable to the officers or other employees whose services have become transferred by or under this Act to the Central Government or the Government company, shall, out of the monies standing, on the appointed day, to the credit of such provident, superannuation, welfare or other fund, stand transferred to, and vested in, the Central Government or the Government company, as the case may be.

(2) The monies which stand transferred, under sub-section (1), to the Central Government or the Government company, as the case may be, shall be dealt with by that Government or Government company in such manner as may be prescribed.

CHAPTER VII

MISCELLANEOUS

Act to
have
over-
riding
effect.

16. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law, other than this Act, or in any decree or order of any court, tribunal or other authority.

Contracts
in bad
faith
may be
cancelled
or varied.

17. (1) If the Central Government is satisfied after such inquiry as it may think fit that any contract or agreement entered into at any time within three years immediately preceding the commencement of this Act between the Metal Corporation or the managing agents of Metal Corporation and any other person, in so far as such contract or agreement relates to the undertaking of the Metal Corporation, has been entered into in bad faith or is detrimental to the interests of the undertaking of the Metal Corporation, it may make an order cancelling (either unconditionally or subject to such conditions as it may think fit to impose) or

varying the contract or agreement, and thereafter the contract or agreement shall have effect accordingly:

Provided that no such contract or agreement shall be cancelled or varied except after giving to the parties to the contract or agreement a reasonable opportunity of being heard.

(2) Any person aggrieved by an order made under sub-section (1) may make an application to the High Court at Delhi for the variation or reversal of such order and thereupon such court may confirm, modify or reverse such order.

18. (1) No suit, prosecution or other legal proceeding shall lie against the Central Government or any officer of that Government or the Administrator or the Government company or any officer or other person authorised by that Government or Government company for anything which is in good faith done or intended to be done under this Act.

Protection of action taken in good faith.

(2) No suit or other legal proceeding shall lie against the Central Government or any of its officers or other employees or the Government company or any officer or other person authorised by that company for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

19. (1) The Central Government may, by notification, direct that all or any of the powers exercisable by it under this Act, other than the power conferred by section 22, may also be exercised by such person or persons, as may be specified in the notification.

Delegation of powers.

(2) Whenever any delegation of power is made under sub-section (1), the persons to whom such power has been delegated shall act under the direction, control and supervision of the Central Government.

20. Any person who,—

Penalties.

(a) having in his possession, custody or control any property forming part of any undertaking of the Metal Corporation, wrongfully withholds such property from the Central Government or Government company; or

(b) wrongfully obtains possession of, or retains, any property forming part of the undertaking of the Metal Corporation or wilfully withholds or fails to furnish to the Central Government or the Government company or any person or body of persons specified by that Government or Government company, any document relating to such undertaking which may be in his possession, custody or control or fails to deliver to the Central Government or the Government company or any person or body of persons specified by that Government or Government company, any assets, books of accounts, registers or other documents in his possession, custody or control, relating to the undertaking of the Metal Corporation; or

(c) wrongfully removes or destroys any property forming part of any undertaking of the Metal Corporation or prefers any claim

under this Act which he knows or has reasonable cause to believe to be false or grossly inaccurate,

shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to ten thousand rupees, or with both.

Offences
by com-
panies.

21. (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals;

(b) “director”, in relation to a firm, means a partner in the firm.

Power
to make
rules.

22. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner in which the monies in any provident or other fund referred to in sub-section (2) of section 15 shall be dealt with:

(b) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the Central Government under this Act, shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form

or be of no effect, as the case may be; so, however, that any modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

23. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Power to
remove
difficul-
ties.

Provided that no such order shall be made after the expiry of a period of two years from the date on which this Act receives the assent of the President.

24. (1) On the commencement of this Act, the Tribunal constituted under sub-section (1) of section 11 of the Metal Corporation of India (Acquisition of Undertaking) Act, 1966, shall stand abolished and every proceeding pending before it, every order made by it and every appeal or application against any such order, shall stand abated, and, on such abatement, the Central Government shall take charge of all records of proceedings, applications, memoranda, registers and other documents maintained by, or in connection with any proceeding before, the Tribunal.

Abolition
of Tribu-
nal, etc.

36 of 1966.

(2) On the commencement of this Act,—

(a) every suit, appeal or other proceeding of whatever nature in relation to the affairs or business of the undertaking of the Metal Corporation instituted before such commencement, and pending on such commencement shall not abate, be discontinued or be, in any way, prejudicially affected by reason of anything contained in this Act, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the Metal Corporation and not against the Central Government or the Government company;

(b) every suit, appeal or other proceeding of whatever nature instituted after such commencement but before the appointed day, in relation to the affairs or business of the undertaking of the Metal Corporation, and pending on the appointed day, shall not abate, be discontinued or, in any way, be prejudicially affected by reason of anything contained in this Act, but such suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the Central Government or the Government company.

(3) Anything done, any action taken or any contract entered into by the Central Government, Administrator or the Government company at any time during the period commencing on the 22nd day of October, 1965, and ending on the appointed day shall be deemed to have been done, taken or entered into by the Central Government or, as the case may be, the Government company in the due course of management of the undertaking of the Metal Corporation.

25. (1) The Metal Corporation (Nationalisation and Miscellaneous Provisions) Ordinance, 1976 is hereby repealed.

Repeal of
Ordinance
12 of 1976
and saving.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

STATEMENT OF OBJECTS AND REASONS

The Metal Corporation of India Limited, a company, had a mining lease in respect of zinc-lead deposits in Zawar area in Rajasthan and owned a lead smelter at Tundoo in Bihar. It had undertaken to expand production from the Zawar mines and to construct a Zinc Smelter near Udaipur for producing electrolytic grade zinc and bye-products. However, for various reasons, the Corporation was not able to complete the projects it had undertaken. The construction work came to a standstill and the Corporation failed to meet its repayment obligations to the suppliers of machinery and others.

2. As zinc and lead are essential raw materials for the economy of the country and are of considerable strategic importance to the country, it was necessary in the public interest that the project undertaken by the Corporation should be completed as soon as possible. In the circumstances, for the speedy development and expansion of the zinc-lead deposits, the undertaking of the Metal Corporation of India was acquired by the Central Government with effect from 22nd October, 1965 by a Parliamentary legislation, enacted in 1965. The said Act, having been struck down, was replaced by the Metal Corporation of India (Acquisition of Undertaking) Act, 1966 (36 of 1966). The undertaking of the Corporation was later vested in the Hindustan Zinc Limited, Udaipur, a Government company, with effect from 10th January, 1966.

3. Section 10 of the 1966-Act provided for payment of compensation for the acquisition of the undertaking by the Central Government to the Metal Corporation. The principles for the determination of the amount of the compensation were specified in the Schedule to the Act and it was provided that where the amount of the compensation could be fixed by agreement, it shall be determined in accordance with such agreement; but where no such agreement could be reached, the Central Government shall refer the matter to a one-man Tribunal. The amount of compensation could not be determined by agreement because the Corporation was engaged for about four years from 1965 in questioning the *vires* of 1965-Act in the Punjab High Court and the *vires* of the 1966-Act first in the Supreme Court and then in the Calcutta High Court. The Calcutta High Court ultimately dismissed its writ petition on 1st April, 1969.

4. Pursuant to section 10 of the 1966-Act, efforts were made to determine the amount of compensation by mutual agreement. An offer of compensation of Rs. 1.98 crores was made to the Corporation in April, 1971. As there was no response to the offer from the Corporation within the time-limit specified in the offer, a one-man Tribunal was constituted on 29th November, 1971, as provided under section 11 of the 1966-Act.

5. The Tribunal could not commence its proceedings as, in the meanwhile, some of the shareholders of the Corporation filed a writ petition in the Calcutta High Court, seeking an injunction against the proceedings of the Tribunal. That petition was finally dismissed in July, 1972.

6. Thereafter, the Tribunal directed the Corporation in August, 1972, to file its claim. The Corporation, however, wanted inspection of the records before filing its claim, and, after protracted proceedings arising out of its pleas, the Corporation ultimately filed its claim on 27th April, 1974, claiming Rs. 101.80 crores. The Central Government filed a written reply in September, 1974, and the Corporation filed its rejoinder in November, 1974.

7. Thereafter, the issues were to be framed, but the Corporation wanted inspection of records once again and also sought financial assistance from the Government to present its case effectively. This plea of the Corporation further delayed the determination of the amount of compensation. Finally, on 21st June, 1976, the Corporation went to the extent of withdrawing from further participation in proceedings before the Tribunal.

8. The undertaking of the Corporation was acquired for the speedy development of the zinc-lead deposits. The prolongation of the proceedings before the Tribunal by the Corporation continued to leave indeterminate the amount of compensation payable, which ultimately has to be capitalised. This was standing in the way of formulation and execution of plans for further increase in production of these critical metals by the Government company in which the undertaking was vested under section 12 of the 1966-Act.

9. In pursuance of the continued objective of increased production of zinc and lead metals and to subserve the common good, which, for the reasons stated now, necessitated ending of the uncertainty in regard to the amount of compensation payable to the Corporation, the Metal Corporation (Nationalisation and Miscellaneous Provisions) Ordinance, 1976, was promulgated by the President on 2nd August, 1976.

10. The Bill seeks to replace the said Ordinance.

NEW DELHI;

CHANDRAJIT YADAV.

The 6th August, 1976.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117
OF THE CONSTITUTION OF INDIA

[Copy of letter No. 54018(1)/76-Met. II, dated the 9th August, 1976 from Shri Chandrajit Yadav, Minister of Steel and Mines to the Secretary-General, Lok Sabha.]

The President having been informed of the subject matter of the proposed Bill recommends to the House the introduction of the Bill under article 117(1) of the Constitution of India and also recommends the consideration of the Bill under article 117(3).

FINANCIAL MEMORANDUM

Sub-clause (1) of clause 4 of the Bill seeks to provide that the right, title and interest in relation to the undertaking of the Metal Corporation, which had been transferred to, and vested in, the Central Government on 22nd October, 1965 under section 3 of the Metal Corporation of India (Acquisition of Undertaking) Act, 1966 (36 of 1966), and was thereafter transferred to, and vested in, the Hindustan Zinc Limited a Government company, shall stand re-transferred to, and re-vested in, the Metal Corporation and immediately thereafter the management of the undertaking of the Metal Corporation would vest in the Central Government. According to the Bill, the management of the undertaking of the Metal Corporation remained vested in the Central Government for the period commencing on 22nd October, 1965 and ending on 2nd August, 1976, i.e. the day on which the Metal Corporation (Nationalisation and Miscellaneous Provisions) Ordinance, 1976 (12 of 1976) was promulgated by the President. Clause 10 of the Bill, therefore, provides for the payment of an amount, at the rate of Rs. 11.39 lakhs per annum, for the deprivation of the Metal Corporation of the management of its undertaking during the period aforesaid. The total amount to be paid for the period aforesaid will thus come to rupees 122.79 lakhs.

Clause 7 of the Bill seeks to provide that on and from the appointed day, i.e. the 2nd day of August, 1976, the undertaking of the Metal Corporation shall stand transferred to, and vested in, the Central Government. Clause 11 of the Bill seeks to provide for the payment of an amount of rupees 198 lakhs to the Metal Corporation for the acquisition of its undertaking.

Clause 12 of the Bill provides that the amount aforesaid is to be paid within a period of three months from 2nd August, 1976, and in case of non-payment of the amount within the period aforesaid, the amount will carry simple interest at the rate of 4 per cent per annum until it is paid. Since it is not proposed to delay the payment of the amount, no expenditure is likely to be involved for payment of any interest.

The Bill, if enacted would, therefore, involve a non-recurring expenditure of a total amount of rupees 320.79 lakhs (rupees 122.79 lakhs + rupees 198 lakhs).

Since management of the undertaking of the Metal Corporation is proposed to be vested in the Hindustan Zinc Limited immediately after it has vested in the Central Government, no other recurring and non-recurring expenditure would be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 22 of the Bill empowers the Central Government to make rules to carry out the provisions of the Bill. Sub-clause (2) of that clause enumerates the matters in regard to which the rules may be made. These are matters of detail and could hardly be provided in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

Memorandum regarding changes in the Legislation to replace the Metal Corporation (Nationalisation and Miscellaneous Provisions) Ordinance, 1976

Besides necessary drafting and consequential changes, the following changes have been made in the Bill, namely:—

1. An Explanation has been inserted in sub-clause (2) of clause 7. The Explanation is only of a clarificatory nature.

2. In sub-clause (2) of clause 17, the word "Delhi" has been substituted for the word "Calcutta". In the Ordinance the High Court of Calcutta was given jurisdiction to entertain applications for the variation or reversal of orders passed under sub-clause (1) of that clause because the registered office of the Metal Corporation of India Limited is at Calcutta. But since the orders against which such applications may be made, could be made by the Central Government, the jurisdiction to hear such applications is being given to the High Court at Delhi.

3. In sub-clause (1) of clause 24, a provision has been included requiring the Central Government to take charge of all records and other documents of the Tribunal which has been abolished.

BILL No. 77 OF 1976

A Bill to repeal the Dhoties (Additional Excise Duty) Act, 1953.

BE it enacted by Parliament in the Twenty-seventh Year of the Republic of India as follows:—

1. This Act may be called the Dhoties (Additional Excise Duty) Repeal Act, 1976.

Short
title.

2. The Dhoties (Additional Excise Duty) Act, 1953, is hereby repealed.

Repeal of
Act 39 of
1953.

STATEMENT OF OBJECTS AND REASONS

The Dhoties (Additional Excise Duty) Act, 1953, was enacted for protecting the interests of the handloom industry by providing for the levy of an additional duty of excise on dhoties issued out of any mill or any group of mills in excess of the permissible quota under the Act. The K. K. Shah Study Team in its report to the Government had recommended that the dhoti quota system was unsatisfactory and had failed to confer any meaningful benefit to the handloom industry. The production of dhoties by mills has by now fallen much below the permissible quota under the Act. Besides, regulatory measures have been separately taken under clause 20 of the Cotton Textiles (Control) Order, 1948, to restrict the quantity of dhoti produced by factories using power. On a consideration of the various aspects, it is felt that the Dhoties (Additional Excise Duty) Act, 1953, has outlived its utility and it is therefore proposed to repeal that Act.

NEW DELHI;
The 6th August, 1976.

D. P. CHATTOPADHYAYA.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE
CONSTITUTION OF INDIA

[Extract from letter No. 31/1/69-Tex. I, dated August 13, 1976 from Prof. D. P. Chattopadhyaya, Minister of Commerce to the Secretary-General, Lok Sabha].

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The President having been informed of the subject matter of the Dhoties (Additional Excise Duty) Repeal Bill, 1976, recommends under article 117(1) of the Constitution of India, the introduction of the Bill in the current session of Lok Sabha.

BILL NO. 80 OF 1976

A Bill further to amend the Companies Act, 1956.

BE it enacted by Parliament in the Twenty-seventh year of the Republic of India as follows:—

- | | | |
|--------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|
| | 1. This Act may be called the Companies (Amendment) Act, 1976. | Short title. |
| 5 of 1898.
2 of 1974. | 2. In the Companies Act, 1956 (hereinafter referred to as the principal Act), in section 10E, in sub-section (4D), for the words, letters and figures "Chapter XXXV of the Code of Criminal Procedure, 1898", the words, letters and figures "Chapter XXVI of the Code of Criminal Procedure, 1973" shall be substituted. | Amendment of section 10E. |
| 54 of 1969. | 3. In section 108H of the principal Act, the words, brackets, letters and figures 'and, any reference in sections 108A, 108B and 108C to "same management" shall be construed as a reference to "same management" as defined in clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969' shall be inserted at the end. | Amendment of section 108H. |
| | 4. In section 220 of the principal Act,— | |
| | (i) in sub-section (1), after the words "balance sheet and profit and loss account were so laid", the words ", or, where the annual | Amendment of section 220. |

general meeting of a company for any year has not been held, there shall be filed with the Registrar within thirty days from the latest day on or before which that meeting should have been held in accordance with the provisions of this Act,—” shall be inserted;

(ii) in sub-section (2), after the words “does not adopt the balance sheet”, the words “, or, if the annual general meeting of a company for any year has not been held,” shall be inserted.

Amend-
ment of
section
293.

5. In section 293 of the principal Act, in sub-section (1), in clause (e), for the words “twenty-five thousand rupees”, the words “fifty thousand rupees” shall be substituted.

Amend-
ment of
section
293A.

6. In section 293A of the principal Act,—

(a) in sub-section (1), for the words “neither a company”, the words “neither a Government company” shall be substituted;

(b) in sub-section (2), for the word “company”, wherever it occurs, the words “Government company” shall be substituted.

Insertion
of new
section
293AA.

7. After section 293A of the principal Act, the following section shall be inserted, namely:—

“293AA. (1) Notwithstanding anything contained in section 293, neither a company in general meeting nor its Board of directors shall, after the commencement of the Companies (Amendment) Act, 1976, contribute—

(a) to any political party, or

(b) for any political purpose to any individual or body,

any amount or amounts which, or the aggregate of which, will, in any financial year, exceed fifty thousand rupees or five per cent. of its average net profits as determined in accordance with the provisions of sections 349 and 350 during the three financial years immediately preceding, whichever is greater.

Explanation.—Where a portion of a financial year of the company falls before the commencement of the Companies (Amendment) Act, 1976, and a portion falls after such commencement, the latter portion shall be deemed to be a financial year within the meaning, and for the purposes, of this sub-section.

(2) Every company shall disclose in its profit and loss account any amount or amounts contributed by it under sub-section (1) to any political party or for any political purpose to any individual or body during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party, individual or body to which, or to whom, such amount has been contributed.

(3) If a company makes default in complying with the provisions of sub-section (2), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees.

Restric-
tions on
the power
of non-
Govern-
ment com-
panies to
make
political
contribu-
tions.

(4) Nothing contained in this section shall apply to a Government company."

8. In section 620 of the principal Act, for sub-section (2), the following sub-section shall be substituted, and shall be deemed to have been substituted with effect from the 1st day of February, 1975, namely:—

Amendment of section 620.

"(2) A copy of every notification, proposed to be issued under sub-section (1), shall be laid, in draft, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses."

9. After section 634 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 634A.

"634A. Any order made by the Company Law Board under section 17, section 18, section 19, section 79; section 141 or section 186 may be enforced by that Board in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for that Board to send, in the case of its inability to execute such order, to the court within the local limits of whose jurisdiction,—

Enforcement of orders of Company Law Board.

(a) in the case of an order against a company, the registered office of the company is situated, or

(b) in the case of an order against any other person, the person concerned voluntarily resides, or carries on business or personally works for gain."

10. In section 635 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—

Amendment of section 635.

"(4) Where any order made by the Company Law Board under section 17, section 18, section 19, section 79 or section 186 is required to be enforced by a court, a certified copy of the order shall be produced to the proper officer of the court required to enforce the order and the provisions of sub-sections (2) and (3) shall, as far as may be, apply to every such order in the same manner and to the same extent as they apply to an order made by a court."

STATEMENT OF OBJECTS AND REASONS

In *State of Bombay v. Bandan Ram Bhandani* [AIR (1961) SC 186], the question arose as to whether the company and its officers are liable to be prosecuted under the 1913 Act for not laying the balance sheet and the profit and loss account before the company in annual general meeting where the annual general meeting of the Company was not held. In that case, the Supreme Court took the view that a person charged with an offence could not rely on his own default as a defence to the charge. If he was responsible for not calling the annual general meeting, he could not be heard to say in his defence to the charge that as the annual general meeting was not held, the balance-sheet and profit and loss account could not be laid before the company in annual general meeting. A different view has, however, been taken on the point by the Supreme Court in the case of *State of Andhra Pradesh v. Andhra Pradesh Provincial Potteries Ltd.* [AIR (1973) SC 2429].

Persons in charge of the management of some of the companies sometimes omit to convene the annual general meeting of the company and by such omission keep the shareholders as well as the creditors of the company in the dark about the affairs of the company and its financial condition. Further, by such omission, they also evade the necessity of filing the balance-sheet and the profit and loss account with the Registrar of Companies. When a document is filed with the Registrar of Companies, it is open to any shareholder or creditor to inspect such document and to obtain a copy thereof. In the circumstances, it is absolutely essential that even where the annual general meeting of the company has not been held, the balance-sheet and profit and loss account should be filed with the Registrar of Companies to enable the shareholders and other persons to find out, from inspection of the said documents, the affairs of the company and its financial condition. The Bill, therefore, seeks to amend section 220 to achieve the said object.

Under section 293 of the Companies Act, 1956, a company is empowered to make donations for charitable purposes up to five per cent. of its average net profits during the preceding three years or up to Rs. 25,000, whichever is greater. The ceiling of Rs. 25,000 was fixed long ago and it is felt that in the present context, the said ceiling should be raised to Rs. 50,000. The Bill, therefore, seeks to amend section 293.

Section 293A imposes a complete ban on contributions by companies to any political party or to any individual or body for political purposes. Experience has shown that the said ban has not produced the desired result. It is, therefore, proposed to amend section 293A so as to remove the said ban in relation to non-Government companies.

New Section 293AA is proposed to be inserted to enable non-Government companies to make contributions to political parties or to any in-

dividual or body for political purposes up to a limit of five per cent. of its average net profits during the preceding three years or Rs. 50,000, whichever is greater.

Section 620 of the Companies Act, 1956, empowers the Central Government to modify, by notification, any of the provisions of the Act in its application to a particular Government company or to Government companies in general. Every notification proposing to make such modification is required to be placed, in draft, before each House of Parliament for a period of not less than 30 days while it is in session. Since the said period of 30 days cannot, sometimes, be completed in one session, it is necessary to amend the section to permit the period of 30 days to be completed in one session or in two or more successive sessions. The Bill seeks to amend section 620 to achieve the said object.

Other amendments included in the Bill are of a consequential or formal nature.

NEW DELHI;

H. R. GOKHALE.

The 16th August, 1976.

BILL No. 82 OF 1976

A Bill further to amend the Advocates Act, 1961.

Be it enacted by Parliament in the Twenty-seventh Year of the Republic of India as follows:—

Short
title and
com-
mence-
ment,

1. (1) This Act may be called the Advocates (Amendment) Act, 1976.

(2) Save as otherwise provided in this Act, it shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

Amend-
ment of
section 2.

2. In section 2 of the Advocates Act, 1961 (hereinafter referred to as the principal Act), in sub-section (1),—

25 of 1961.

(i) clause (c) shall be omitted;

(ii) in clause (i), for the words, "vakil or attorney", the words "or vakil" shall be substituted.

Amend-
ment of
section 3

3. In section 3 of the principal Act, for sub-section (3), the following sub-sections shall be substituted, namely:—

"(3) There shall be a Chairman of each State Bar Council as follows:—

(a) in the case of the State Bar Council of Delhi, such advocate as may be nominated by the Central Government shall be the Chairman for a period of two years;

(b) in the case of the State Bar Council of Assam, Nagaland, Meghalaya, Manipur and Tripura, the Advocate-General of each of the States of Assam, Manipur, Meghalaya, Nagaland and Tripura, *ex-officio* shall, by rotation in that order, be the Chairman for a period of two years;

(c) in the case of the State Bar Council of Punjab and Haryana, the Advocate-General of each of the States of Punjab and Haryana, *ex-officio* shall, by rotation in that order, be the Chairman for a period of two years; and

(d) in the case of any other State Bar Council, the Advocate-General of the State, *ex-officio*, shall be the Chairman.

(3A) There shall be a Vice-Chairman of each State Bar Council who shall be the senior-most advocate amongst the members of that Council."

4. In section 4 of the principal Act,—

Amend-
ment of
section 4.

(i) in sub-section (1), after clause (b), the following clause shall be inserted, namely:—

"(bb) a person appointed by virtue of office (whether or not under Government) by the Central Government;";

(ii) for sub-section (2), the following sub-sections shall be substituted, namely:—

"(2) The Attorney-General of India *ex-officio* and the Solicitor-General of India *ex-officio* shall be the Chairman and Vice-Chairman respectively of the Bar Council of India.

(2A) The term of office of the member of the Bar Council of India appointed under clause (bb) of sub-section (1) shall be two years from the date of his appointment or till he ceases to hold the office by virtue of which he was appointed, whichever is earlier."

5. In sub-section (2) of section 15 of the principal Act,—

Amend-
ment of
section
15.

(i) clause (c) shall be omitted;

(ii) in clause (d), the words "or to the office of the Chairman or Vice-Chairman" shall be omitted.

6. In section 24 of the principal Act,—

Amend-
ment of
section
24.

(i) in clause (c) of sub-section (1), after the words, figures and letters "the 31st day of December, 1976;", the following shall be inserted, namely:—

"or has passed the articulated clerk's examination or any other examination specified by the High Court at Bombay or Calcutta for enrolment as an attorney of that High Court;";

(ii) sub-section (4) shall be omitted.

Omission
of section
31.

7. Section 31 of the principal Act shall be omitted with effect from the 1st day of January, 1977.

Amend-
ment of
section
34.

8. In section 34 of the principal Act, sub-sections (2) and (3) shall be omitted with effect from the 1st day of January, 1977.

Substitu-
tion of
new sec-
tion for
section
46.

9. For section 46 of the principal Act, the following section shall be substituted, namely:—

Payment
of
part of
enrol-
ment
fees
to the
Bar
Council
of
India.

“46. Every State Bar Council shall, for each financial year commencing on or after the 1st day of April, 1976, pay to the Bar Council of India a sum equivalent to twenty per cent. of the total of the enrolment fees realised by it under this Act during that year, before the thirtieth day of April of the succeeding financial year.”.

Amend-
ment of
section
55.

10. In section 55 of the principal Act, clause (b) shall be omitted with effect from the 1st day of January, 1977.

Transi-
tional
provi-
sions.

11. Every person holding office as—

- (i) Chairman or Vice-Chairman of the Bar Council of India; or
- (ii) Chairman or Vice-Chairman of any State Bar Council,

immediately before the coming into force of section 4 or, as the case may be, section 3 of this Act shall cease to hold such office on such commencement.

STATEMENT OF OBJECTS AND REASONS

Experience gained in the practical working of the Advocates Act, 1961 has necessitated the following amendments:—

(i) *Abolition of the Dual System*

The Indian High Courts Act, 1861 (commonly known as the Charter Act) passed by the British Parliament enabled the Crown to erect and establish High Courts in India by Letters Patent and these Letters Patent authorised and empowered the High Courts to make rules for enrolment of advocates and attorneys (commonly known as solicitors). Under these rules, a suitor on the original side of the High Courts at Bombay and Calcutta has to approach an advocate only through the conduit of a solicitor. Though the rules of the High Courts have minimised this compulsion recently, complaints have been voiced against the system mainly on the ground that it imposes a double burden on a poor litigant who is required to pay fees to two sets of professionals and it has been suggested that the two classes of professionals, namely, advocates and solicitors that stand between the law and the lay should be amalgamated into a single class of advocates. It is proposed to give effect to the suggestion by abolishing the dual system with a view to simplifying and streamlining court procedure, avoiding stratification of the profession and reducing the costs of litigation keeping the needs of the consumer of the legal process as a matter of paramount importance.

(ii) *Reducing the share of the Bar Council of India in the enrolment fees*

Presently out of Rs. 250 paid by an applicant for enrolment as advocate, the share of the apex body, namely, the Bar Council of India is 40 per cent. and the remainder is retained by the State Bar Council where he is enrolled. The State Bar Councils have complained that they are hampered for want of funds in implementing welfare schemes like insurance and provident fund for advocates and legal aid to the poor. It is, therefore, proposed that the share of the Bar Council of India in the enrolment fees should be reduced to 20 per cent. from the existing 40 per cent.

(iii) *Making the Law Officers of the Centre and the State ex-officio Chairmen of the Bar Council of India and State Bar Councils respectively*

Under the present scheme of the Advocates Act, 1961, the posts of Chairmen and Vice-Chairmen of the Bar Council of India as well as the State Bar Councils are elective ones. The Attorney-General of India as well as the Advocates-General of States are indubitably leaders in their own rights in the profession as being well-known for their erudition, advocacy, integrity and legal acumen. It is proposed to make these Law Officers *ex-officio* Chairmen of the Bar Council of India and the State Bar Councils respectively; Solicitor-General of India, the *ex-officio* Vice-Chairman of the Bar Council of India and the senior-most Advocate from amongst the elected members of a State Bar Council to be the Vice-Chairman of that Council. Representation is sought to be given to the Central Government on the Bar Council of India and a rotational pattern for Chairmanship amongst the Advocates-General is being introduced as respects Bar Councils constituted for territories comprising of more than one State.

Hence the Bill.

NEW DELHI;
The 12th August, 1976.

H. R. GOKHALE.

BILL NO. 75 OF 1976

A Bill to provide for the taking over, in the public interest, of the management of the undertaking of certain companies, pending nationalisation of such undertakings, with a view to ensuring the supply of certain varieties of cloth needed by the weaker sections of the community as also by the Defence Department and for matters connected therewith or incidental thereto.

WHEREAS Laxmirattan Cotton Mills Company Limited were engaged in the production (besides coarse and medium varieties of cloth needed by the weaker sections of the community) of canvas and dosuti which is needed by the Defence Department;

AND WHEREAS the closure of the Laxmirattan Cotton Mills Company Limited has prejudicially affected the supply of canvas and dosuti to the Defence Department:

AND WHEREAS the Atherton West and Company Limited were mainly engaged in the production of coarse and medium varieties of cloth needed by the weaker sections of the community;

AND WHEREAS as a result of mismanagement the Atherton West and Company Limited has suffered losses exceeding the value of its available assets and has been closed down;

AND WHEREAS, in view of the adverse financial position of the Atherton West and Company Limited, some members of the Board of Directors of that company had, for some time, absconded;

AND WHEREAS it is necessary in the interests of the general public that the undertakings of the two companies aforesaid should be re-started, so that the production of the needed varieties of cloth may be continued;

BE it enacted by Parliament in the Twenty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Laxmirattan and Atherton West Cotton Mills (Taking Over of Management) Act, 1976.

Short title
and com-
mence-
ment.

(2) It shall be deemed to have come into force on the 19th day of July, 1976.

2. In this Act, unless the context otherwise requires,—

Defini-
tions.

(a) “appointed day” means the 19th day of July, 1976;

(b) “Custodian” means the person, appointed under section 4, to take over the management of the undertakings of the two companies;

(c) “notification” means the notification published in the Official Gazette;

(d) “two companies” means—

1 of 1956.

(i) the Atherton West and Company Limited, a company within the meaning of the Companies Act, 1956, and having its registered office at Anwarganj, Kanpur, in the State of Uttar Pradesh, and

1 of 1956.

(ii) the Laxmirattan Cotton Mills Company Limited, a company within the meaning of the Companies Act, 1956, and having its registered office at Behari Niwas, Kanpur, in the State of Uttar Pradesh.

CHAPTER II

TAKING OVER OF THE MANAGEMENT OF THE UNDERTAKINGS OF THE TWO COMPANIES

Management of the undertakings of two companies to vest in the Central Government.

3. (1) On and from the appointed day, the management of the undertakings of the two companies shall vest in the Central Government.

(2) The undertakings of each of the two companies shall be deemed to include all assets, rights, leaseholds, powers, authorities and privileges, and all property, movable and immovable, including lands, buildings, works, workshops, projects, stores, spares, instruments, machinery, equipment, automobiles and other vehicles, cash balances, reserve fund, investments and book debts and all other rights and interests arising out of such property as were, immediately before the appointed day, in the ownership, possession, power or control of the concerned company, whether within or without India, and all books of account, registers, and all other documents of whatever nature relating thereto.

(3) Any contract, whether express or implied, or other arrangement, in so far as it relates to the management of the business and affairs of either of the two companies in relation to its undertakings, and in force immediately before the appointed day, shall be deemed to have terminated on the appointed day.

(4) All persons in charge of the management, including persons holding offices as directors, managers or any other managerial personnel of either of the two companies, immediately before the appointed day, shall be deemed to have vacated their offices as such on the appointed day.

(5) Notwithstanding anything contained in any other law for the time being in force, no person in respect of whom any contract of management or other arrangement is terminated by reason of the provisions contained in sub-section (3), or who ceases to hold any office by reason of the provisions contained in sub-section (4), shall be entitled to claim any compensation for the premature termination of the contract of management or other arrangement or for the loss of office, as the case may be.

(6) Notwithstanding any judgment, decree or order of any court, tribunal or other authority or anything contained in any other law (other than this Act) for the time being in force, every Receiver or other person in whose possession or custody or under whose control any undertaking of either of the two companies or any part thereof may be immediately before the appointed day, shall, on the commencement of this Act, deliver possession of the said undertaking or such part thereof, as the case may be, to the Custodian, where no Custodian has been appointed, to such other person as the Central Government may direct.

(7) For the removal of doubts, it is hereby declared that any liability incurred by either of the two companies in relation to its undertakings before the appointed day shall be enforceable against the concerned company and not against the Central Government or the Custodian.

Custodian of the two companies.

4. (1) The Central Government may, as soon as it is convenient administratively so to do, appoint any person or body of persons (including a Government company, whether in existence at the commencement of this Act or incorporated thereafter) as the Custodian of the undertakings of either, or both, of the two companies for the purpose of carrying on the management of such undertakings and the Custodian so appointed shall carry on the management of the undertakings of the two companies for and on behalf of the Central Government.

(2) On the appointment of the Custodian under sub-section (1), the management of the undertakings of the two companies shall vest in such Custodian and all persons in charge of the management of such undertakings immediately before such appointment shall cease to be in charge of such management and shall be bound to deliver such management to the Custodian.

(3) The Central Government may, by notification, authorise the Custodian to appoint any person (including a Government company, whether in existence at the commencement of this Act or incorporated thereafter) as the Additional Custodian of the undertakings of either, or both, of the two companies.

(4) The Additional Custodian shall assist the Custodian in the exercise of his or its powers and duties under this Act and shall function under the direction, supervision and control of the Custodian; and the Custodian may delegate to the Additional Custodian all or such of his or its powers as he or it may think fit.

(5) Subject to any general or special direction given or condition imposed by the Custodian, any person authorised by the Custodian to exercise any power may exercise that power in the same manner and with the same effect as if it had been conferred on that person directly by this Act and not by way of authorisation.

(6) The Central Government may issue such directions (including directions as to initiating, defending or continuing any legal proceedings before any court, tribunal or other authority) to the Custodian as to his or its powers and duties as the Central Government deems to be desirable in the circumstances of the case, and the Custodian may also apply to the Central Government at any time for instructions as to the manner in which he or it shall conduct the management of the undertakings of either, or both, of the two companies or in relation to any other matter arising in the course of such management.

(7) Subject to the other provisions of this Act and the control of the Central Government, the Custodian shall be entitled, notwithstanding anything contained in the Companies Act, 1956, to exercise all the powers of the Board of directors of the two companies (including the power to dispose of any properties or assets of the two companies) whether such powers are derived from the Companies Act, 1956, or from the memorandum and articles of association of the concerned company or from any other source.

(8) Every person having possession, custody or control of any property forming part of any undertaking of either of the two companies shall deliver forthwith such property to the Custodian or to any officer or other employee of the Central Government or the Custodian, as may be authorised by the Central Government in this behalf.

(9) Any person who, on the appointed day, has in his possession or under his control any books, papers or other documents relating to the undertakings of either, or both, of the two companies, including the minutes books containing the resolutions of the persons in charge of the management thereof before the appointed day, the current cheque books relating to the undertakings of such company, any letters, memoranda, notes or other communications between him and such company shall, notwithstanding anything contained in any other law for the time being in force, be liable to account for the books, papers and other documents (including such minutes books, cheque books, letters, memoranda, notes or other communications) to the Custodian and shall deliver them up to the Custodian or to any such person (being an officer or other employee of the Central Government or the Custodian) as may be authorised by the Central Government in this behalf.

(10) Every person in charge of the management of the undertakings of either of the two companies immediately before the appointed day shall, within ten days from that day or within such further period as the Central Government may allow in this behalf, furnish to the Custodian a complete inventory of all the properties and assets (including particulars of book debts and investments and belongings) forming part of the undertakings of such company immediately before the appointed day and of all the liabilities and obligations of such company in relation to its undertakings, subsisting immediately before that day, and also of all agreements entered into by such company in relation to its undertakings and in force immediately before that day.

(11) The Custodian and the Additional Custodian shall receive from the funds of the undertakings of each of the two companies such remuneration as the Central Government may fix.

Payment
of amount.

5. (1) Each of the two companies shall be given by the Central Government an amount, in cash, and at the rate specified in sub-section (2), for the vesting in it, under section 3, of the management of the undertakings of each such company.

(2) For every month during which the management of the undertakings of each of the two companies remains vested in the Central Government under this Act, the amount, referred to in sub-section (1) shall be computed at the rate of—

(a) rupees ten thousand per annum in the case of Laxmirattan Cotton Mills Company Limited; and

(b) rupees eight thousand per annum in the case of Atherton West and Company Limited.

CHAPTER III

POWER TO PROVIDE RELIEF TO ANY UNDERTAKING OR TO THE UNDERTAKINGS
OF EITHER OF THE TWO COMPANIES

6. (1) The Central Government may, if satisfied, in relation to any undertaking of either of the two companies or any part thereof, the management of which has vested in it under this Act, that it is necessary so to do in the interests of the general public with a view to preventing any fall in the volume of production of such undertaking, by notification, declare that—

Power of Central Government to make certain declarations in relation to certain undertakings.

(a) all or any of the enactments specified in the Schedule shall not apply or shall apply with such adaptations, whether by way of modification, addition or omission (which does not, however, affect the policy of the said enactments) to such undertaking as may be specified in such notification, or

(b) the operation of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force (to which such undertaking or the company owning such undertaking is a party or which may be applicable to such undertaking or company) immediately before the date of issue of the notification shall remain suspended or that all or any of the rights, privileges, obligations and liabilities accruing or arising thereunder before the said date, shall remain suspended or shall be enforceable with such adaptations and in such manner as may be specified in the notification.

(2) The notification made under sub-section (1) shall remain in force, in the first instance, for a period of one year but the duration of such notification may be extended from time to time by a further notification by a period not exceeding one year at a time:

Provided that no such notification shall, in any case, remain in force after the expiry of three years from the commencement of this Act.

(3) Any notification made under sub-section (1) shall have effect notwithstanding anything to the contrary contained in any other law, agreement or instrument or any decree or order of a court, tribunal, officer or other authority or of any submission, settlement or standing order.

(4) Any remedy for the enforcement of any right, privilege, obligation or liability referred to in clause (b) of sub-section (1) and suspended or modified and all proceedings relating thereto pending before any court, tribunal, officer or other authority shall accordingly remain stayed or be continued subject to such adaptations; so, however, that on the notification ceasing to have effect—

(a) any right, privilege, obligation or liability so remaining suspended or modified shall become revived and enforceable as if the notification had never been made;

(b) any proceeding so remaining stayed shall be proceeded with subject to the provisions of any law which may be then in force, from the stage which had been reached when the proceeding became stayed.

(5) In computing the period of limitation for the enforcement of any right, privilege, obligation or liability referred to in clause (b) of sub-section (1), the period during which it or the remedy for the enforcement thereof remained suspended shall be excluded.

CHAPTER IV

MISCELLANEOUS

Act to have overriding effect. 7. The provisions of this Act or any notification, order or rule made thereunder, shall have effect notwithstanding anything inconsistent therewith contained in any law (other than this Act) or in any instrument having effect by virtue of any law other than this Act or in any decree or order of any court.

Applica-
tion of
Act 1 of
1956. 8. (1) Notwithstanding anything contained in the Companies Act, 1956, or in the memorandum or articles of association of either of the two companies, so long as the management of the undertakings of the two companies remains vested in the Central Government,—

(a) it shall not be lawful for the shareholders of either of the two companies or any other person to nominate or appoint any person to be a director of such company;

(b) no resolution passed at any meeting of the shareholders of either of the two companies on or after the appointed day shall by given effect to unless approved by the Central Government;

(c) no proceeding for the winding up of either of the two companies or for the appointment of a liquidator or receiver in respect thereof shall lie in any court except with the consent of the Central Government.

(2) Subject to the provisions contained in sub-section (1), and to the other provisions contained in this Act and subject to such other exceptions, restrictions and limitations, if any, as the Central Government may, by notification, specify in this behalf, the Companies Act, 1956, shall continue to apply to the two companies in the same manner as it applied thereto before the appointed day.

1 of 1956.

Exclusion of period of operation of this Act from limitation. 9. In computing the period of limitation prescribed by any law for the time being in force for any suit or application against any person by either of the two companies in respect of any matter arising out of any transaction in relation to the undertaking of any of the two companies, the time during which this Act remains in force shall be excluded.

Protection of action taken in good faith. 10. (1) No suit, prosecution or other legal proceeding shall lie against the Custodian, Additional Custodian or any officer or other employee of the Central Government or the Custodian for anything which is in good faith done or intended to be done under this Act.

(2) No suit or other legal proceeding shall lie against the Central Government or the Custodian or the Additional Custodian or any of the officers or other employees of the Central Government or the Custodian for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

11. (1) If the Central Government is satisfied, after such inquiry as it may think proper, that any contract or agreement entered into at any time within three years immediately preceding the appointed day between either of the two companies or managing or other director of any such company and any other person in relation to any service, sale or supply to, or by, the undertakings of either of the two companies, and in force immediately before the appointed day, has been entered into in bad faith, or is detrimental to the interests of the undertaking of the concerned company, it may make, within one hundred and eighty days from the appointed day, an order cancelling or varying (either unconditionally or subject to such conditions as it may think fit to impose) such contract or agreement and thereafter the contract or agreement shall have effect accordingly:

Contracts, etc., in bad faith may be cancelled or varied.

Provided that no contract or agreement shall be cancelled or varied except after giving to the parties to the contract or agreement a reasonable opportunity of being heard.

(2) Any person aggrieved by an order made under sub-section (1) may make an application to the principal civil court of original jurisdiction within the local limits of whose jurisdiction the registered office of the concerned company is situated for the variation or reversal of such order and thereupon such court may confirm, modify or reverse such order.

12. Any transfer of property, movable or immovable, or any delivery of goods made by or on behalf of either of the two companies (not being a transfer or delivery made in the ordinary course of its business or in favour of a purchaser for valuable consideration and in good faith), if made within a period of six months immediately preceding the appointed day, shall be void against the Central Government or the Custodian, as the case may be.

Avoidance of voluntary transfers.

13. If the Custodian is of opinion that any contract of employment entered into by either of the two companies or any managing agent or managing or other director of either of the two companies at any time before the appointed day is unduly onerous, he or it may, by giving to the employee one month's notice in writing of salary or wages for one month in lieu thereof, terminate such contract of employment.

Power to terminate contracts of employment.

14. (1) Any person, who—

Penalties.

(a) having in his possession or custody or under his control any property forming part of any undertaking of either of the two companies, wrongfully withholds such property from the Custodian or any person authorised under this Act, or

(b) wrongfully obtains possession of any such property, or

(c) wilfully retains any property forming part of any undertaking of either of the two companies or removes or destroys it, or

(d) wilfully withholds from, or fails to deliver to, the Custodian or any person authorised under this Act, any books, papers or other documents relating to any undertaking of either of the two companies, which may be in his possession, power or custody or under his control, or

(e) fails, without any reasonable excuse, to furnish information or particulars as provided in sub-section (8) of section 4,

shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to ten thousand rupees, or with both.

(2) No court shall take cognizance of an offence punishable under this section except with the previous sanction of the Central Government or an officer authorised by that Government in this behalf.

Offences by companies.

15. (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

Power to make rules.

16. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

11 of 1976. 17. (1) The Laxmirattan and Atherton West Cotton Mills (Taking Over of Management) Ordinance, 1976, is hereby repealed. Repeal and saving.

(2) Notwithstanding such repeal, anything done or any action taken under the Ordinance so repealed shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE SCHEDULE

(See section 6)

- | | |
|-------------|-----------------------------------------------------------|
| 20 of 1946. | 1. The Industrial Employment (Standing Orders) Act, 1946. |
| 14 of 1947. | 2. The Industrial Disputes Act, 1947. |
| 11 of 1948. | 3. The Minimum Wages Act, 1948. |

STATEMENT OF OBJECTS AND REASONS

Due to mismanagement, the undertakings of the Laxmirattan Cotton Mills Company Limited and Atherton West and Company Limited, two large-sized mills at Kanpur, which were engaged in the manufacture of certain varieties of cloth needed by the weaker sections of the community and also by the Defence Department, were lying closed since May, 1975. The closure had resulted in the unemployment of over five thousand workers.

2. Various avenues of re-opening the mills were explored by the Central Government in consultation with the Government of Uttar Pradesh and the bankers of the two companies. It was found that liabilities of the two companies had exceeded their respective assets and a sum of Rs. 4.90 crores was needed for renovation and modernisation before the Mills of these companies could re-start. The Government of Uttar Pradesh pleaded its inability to shoulder the responsibility. The bankers were also reluctant to advance finance to the existing managements of the two Companies. In the circumstances, there was no alternative other than the nationalisation of the undertakings of the two Companies. The valuation of the undertakings of the two Companies was necessary to determine the amount to be paid for the acquisition of the undertakings. Such valuation would require some time. In the meantime, there was an apprehension that there might be large-scale frittering away of assets which may prove detrimental to the public interest. In the circumstances, the Laxmirattan and Atherton West Cotton Mills (Taking Over of Management) Ordinance, 1976, was promulgated by the President on 19th July, 1976.

3. The Bill seeks to replace the said Ordinance.

NEW DELHI;
The 12th August, 1976.

D. P. CHATTOPADHYAYA,
Minister of Commerce.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE
CONSTITUTION OF INDIA

[Copy of letter No. 10/13/76-*Tex I.* dated the 16th August, 1976 from Prof. D. P. Chattopadhyaya, Minister of Commerce to the Secretary-General, Lok Sabha.]

The President having been informed of the subject matter of the Laxmirattan and Atherton West Cotton Mills (Taking Over of Management) Bill, 1976, to provide for the taking over, in the public interest, of the management of the undertakings of certain companies, pending nationalisation of such undertakings, with a view to ensuring the supply of certain varieties of cloth needed by the weaker sections of the community as also by the Defence Department and for matters connected therewith or incidental thereto, recommends under clause (1) of article 117 of the Constitution of India the introduction of the said Bill in Lok Sabha and also recommends under clause (3) of the same article 117, the consideration of the Bill by Lok Sabha.

FINANCIAL MEMORANDUM

Clause 5 of the Bill provides that for every month during which the management of the undertakings of the two companies remains vested in the Central Government, the two companies shall be paid in cash an amount at the rate of Rs. 10,000 per annum in the case of Laxmi-rattan Cotton Mills Limited and Rs. 8,000 per annum in the case of Atherton West and Company Limited. The expenditure on this account is likely to be of the order of Rs. 12,000 during the remaining period of the current financial year.

2. Money will also have to be provided by the Central Government for the working capital as well as modernisation of the mills of the two companies. Expenditure on modernisation is necessary to make the mills financially viable. The total requirements of margin money for working capital for these two mills have been estimated at Rs. 184 lakhs. The requirements on account of modernisation have been estimated at about Rs. 366 lakhs. During the current financial year, it is estimated that an amount of about rupees two crores will be required on account of working capital and modernisation. This expenditure will be met from the budget grant of the Ministry of Commerce.

3. The Bill, if enacted, is not likely to involve any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 16 of the Bill empowers the Central Government to make rules to carry out the provisions of the Bill.

2. The matters in respect of which such rules may be made would relate to matters of procedure and administrative detail and it is not practicable to provide them in the Bill itself. The delegated legislation is, therefore, of a normal character.

S. L. SHAKDHER,
Secretary-General.